

Daily COVID-19 Bulletin – April 15, 2020

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Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's **Coronavirus (COVID-19) Response Team**.

Constitutional Implications of Rent- and Mortgage-Relief Legislation Enacted in Response to the COVID-19 Pandemic

In a previous alert, we discussed the constitutional principles governing legislative responses to COVID-19 under the Takings, Contracts, Due Process, and Equal Protection Clauses of the U.S. Constitution. Here, we apply those principles to proposals currently being debated in state legislatures, including in California and New York, that would provide broad residential and commercial rent and mortgage relief. These and other novel rent- and mortgage-relief schemes may raise constitutional considerations, both for landowners and for lenders with loans secured by the property in question.

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Can You Sue Insurance Companies for Emotional-Distress Damages?

The COVID-19 pandemic may give rise to a variety of novel insurance coverage disputes, and some of those disputes may include claims by policyholders for emotional distress due to a bad-faith claim denial. In California, however, the right to emotional-distress damages in the context of an insurance bad-faith claim is hotly contested. Two older decisions from the California Court of Appeal created a split in the law – with one court ruling that a plaintiff may recover only the emotional-distress damages caused by financial loss (e.g., anxiety over unpaid medical bills), and another court holding that once a plaintiff proves *some* financial loss, he can recover all of his emotional-distress damages, even if not caused by the financial loss. Recent decisions have referenced these two rules in passing without grappling with the conflict. This article explains why California courts will likely limit emotional-distress damages to injuries that are directly tied to economic loss. The damages principles in this article generally apply to claims for bad-faith breaches of any type of insurance contract.

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Press Pools Protect 1st Amendment During Pandemic

In the days of the coronavirus pandemic, social distancing has become our national mantra, and sheltering in place our current occupation. And at the same time that the demand for information from government sources has increased, governments have been forced to restrict public access severely in the name of public health. Ended (at least temporarily) are the days where reporters were free to roam government buildings, to develop sources in close, personal contact, and to sit in packed briefing rooms questioning officials on the news of the day. Even the White House press corps has had to adjust — with social distancing rules being enforced in the normally crowded James S. Brady Press Briefing Room after one of the press corps' members tested positive for COVID-19. Although governments — federal, state and local — may be justified today in limiting the number of journalists who can cover government activities in person, it is imperative that this justification not be used as a means to silence probing, critical coverage.

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